



Amendment No. 4
to
Contract No. NA180000107
for
Cyber Liability Broker of Record
between
Marsh USA Inc. dba Marsh Wortham
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective April 13, 2021 through April 12, 2022. One option remains.
- 2.0 The total contract amount is increased by \$546,546.00 this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 04/13/2018 – 04/12/2019	\$359,363.00	\$359,363.00
Amendment No. 1: Name Change 10/31/2018	\$0.00	\$359,363.00
Amendment No. 2: Option 1 - Extension 04/13/2019 – 04/12/2020	\$413,267.00	\$772,630.00
Amendment No. 3: Option 2 – Extension 04/13/2020 – 04/12/2021	\$475,258.00	\$1,247,888.00
Amendment No. 4: Option 3 – Extension 04/13/2021 – 04/12/2022	\$546,546.00	\$1,794,434.00

- 3.0 By signing this Amendment, the City of Austin confirms that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Printed Name:

JAMES T. HOWARD

Authorized Representative

Sign/Date: JAMES T HOWARD

Digitally signed by JAMES T HOWARD
DN: cn=JAMES T HOWARD, o=CITY OF AUSTIN,
ou=FINANCE,
email=JIM.HOWARD@AUSTINTEXAS.GOV, c=US
Date: 2021.07.21 13:12:30 -0500

Procurement Manager
James T. Howard
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
to
Contract No. NA180000107
for
Cyber Liability Broker of Record
between
Marsh USA Inc. dba Marsh Wortham
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective April 13, 2020 through April 12, 2021. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$475,258.00 by this extension period. The total contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 04/13/2018 – 04/12/2019	\$359,363.00	\$359,363.00
Amendment No. 1: Name Change 10/31/2018	\$0.00	\$359,363.00
Amendment No. 2: Option 1 - Extension 04/13/2019 – 04/12/2020	\$413,267.00	\$772,630.00
Amendment No. 3: Option 2 – Extension 04/13/2020 – 04/12/2021	\$475,258.00	\$1,247,888.00

- 3.0 By signing this Amendment, the City of Austin confirms that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Printed Name:

Authorized Representative

Sign/Date:

Cyrenthia Ellis 2/26/20

Cyrenthia Ellis
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 2
of
Contract No. NA180000107
for
Cyber Liability Broker of Record
between
Marsh USA Inc. dba Marsh Wortham
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 13, 2019 to April 12, 2020. Three options remain.
- 2.0 The total contract amount is increased by \$413,267.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 04/13/2018 – 04/12/2019	\$359,363.00	\$359,363.00
Amendment No. 1: Name Change 10/31/2018	\$0.00	\$359,363.00
Amendment No. 2: Option 1 - Extension 04/13/2019 – 04/12/2020	\$413,267.00	\$772,630.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: 
Printed Name: **George Adkins**
Authorized Representative

Signature:  3.19.19
Erin D'Vincent, Procurement Supervisor
City of Austin
Purchasing Office

Marsh USA Inc. dba Marsh Wortham
2727 Allen Parkway
Houston, TX 77019



**Amendment No. 1
of
Contract No. NA180000107
for
Cyber Liability Broker of Record
between
John L. Wortham & Son LP
Dba Wortham Insurance & Risk Management
and the
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to **Marsh USA Inc. dba Marsh Wortham** as requested by the Contractor:

	From	To
Vendor Name	John L. Wortham & Son LP Dba Wortham Insurance & Risk Management	Marsh USA Inc. Dba Marsh Wortham
Vendor Code (for City use only)	WOR7073730	MAR8309722
Vendor Federal Tax ID (FEIN)	██████████	██████████

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown
Contract Management Supervisor II
City of Austin, Purchasing Office

Date

10-31-18



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

April 13, 2018

Wortham Insurance & Risk Management
George Adkins
Managing Director
2727 Allen Parkway
Houston, TX 77019

Dear Mr. Adkins:

The City of Austin approved the execution of a contract with your company for Cyber Liability Broker of Record services in accordance with the referenced solicitation.

Responsible Department:	Human Resources
Department Contact Person:	Leslie Milvo
Department Contact Email Addr:	leslie.milvo@austintexas.gov
Department Contact Telephone:	512-974-3245
Project Name:	Cyber Liability Broker of Record
Contractor Name:	Wortham Insurance & Risk Management
Contract Number:	MA 5800 NA180000107
Contract Period:	12 months
Dollar Amount	\$359,363
Extension Options:	four 12-month extension options
Solicitation Type:	professional service

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

John Hilbun
Contract Mgmt Specialist IV
City of Austin
Purchasing Office

cc: Leslie Milvo, City of Austin – Risk Management

CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)

AND

John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management (“Contractor”)

for

Cyber Liability Broker of Record

MA 5800 NA180000107

This Contract is between John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management having offices at 2727 Allen Parkway, Houston, TX 77019 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

1.1 This Contract is composed of the following documents:

1.1.1 This document and attached exhibits

1.1.2 The following documents are hereby incorporated into the Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the following Sections are available online at the following location:

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

SECTION NO.	TITLE
0100	STANDARD PURCHASE DEFINITIONS
0300	STANDARD PURCHASE TERMS AND CONDITIONS
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This document

1.2.2 Exhibit A - John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management’s Cyber Insurance Proposal, dated December 7, 2017

1.2.3 Exhibit B Section 0400 – Supplemental Terms and Conditions

1.2.4 Exhibit C Section 0500 – Scope of Work

1.2.5 Exhibit D Section 0800 – Non-Discrimination Certification

1.2.6 The documents referenced in Section 1.1.2

1.3 Term of Contract. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to four additional 12-month periods at the City’s sole option.

1.3.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

1.3.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).

- 1.4 **Compensation.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid \$359,363 for the initial Contract term and \$413,267 for the first extension option, \$475,258 for the second extension option, \$546,546 for the third extension option, and \$630,566 for the fourth extension option, for a total not-to-exceed \$2,425,000 for all fees and expenses. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.
- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**JOHN L. WORTHAM & SON, L.P. D/B/A
WORTHAM INSURANCE & RISK
MANAGEMENT**

BY WORTHAM, L.L.P., GENERAL PARTNER
BY GEORGE ADKINS, MANAGING DIRECTOR

Printed Name of Authorized Person



Signature

MANAGING DIRECTOR

Title:

4/13/2018

Date:

CITY OF AUSTIN

JOHN HILBUN

Printed Name of Authorized Person



Signature

CONTRACT MGMT SPECIALIST IV

Title:

04/13/18

Date:

- Exhibit A John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management's Cyber Insurance Proposal, dated December 7, 2017
- Exhibit B Section 0400 – Supplemental Terms and Conditions
- Exhibit C Section 0500 – Scope of Work
- Exhibit D Section 0800 – Non-Discrimination Certification

Exhibit A



Cyber Insurance Proposal - Information Required for RCA December 7, 2017

DISCLAIMER: The following document represents an outline of policy terms and conditions of the proposed primary Cyber Insurance quote option for Austin Energy. These are manuscript insurance policies that are always subject to court interpretations. Further, certain wording and options can favor one insurer over another for certain potential claim scenarios while another carrier's coverage options can be advantageous for other types of claims. Thus, there can be trade-offs that the insurance buyer must weigh in their decision making process.

I. Complete List of Insurance Carriers Approached – Phase I

Phase I was to approach target markets writing primary cyber insurance for utilities and ask if they could comply with the required confidentiality / non-disclosure agreement procedures in order to receive a copy of submission material. The below carriers were formally approached. Note that a large number of carriers were not approached given their inability to write coverage for utilities on a primary basis with the desired coverage language required for Austin Energy's exposure.

- AEGIS
- AIG
- Argo (Lloyds)
- Ascent (Lloyds)
- Beazley (Lloyds Paper, US Underwriter)
- Nationwide
- Liberty (Lloyds)
- NAS (Lloyds)
- Novae (Lloyds)
- Travelers
- Zurich
- Certain other Lloyds markets

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.



Cyber Insurance Proposal - Information Required for RCA

December 7, 2017

II. Complete List of Insurance Carriers Approached – Phase II

Phase II was to approach the markets who complied with our confidentiality/non-disclosure agreement procedures regarding receipt of the formal submission. Those markets are listed below:

- AEGIS
- Argo (Lloyds)
- Ascent (Lloyds)
- Beazley (Lloyds Paper, US Underwriter)
- NAS (Lloyds)
- Travelers

III. List of Carrier Finalists

- Ascent (Lloyds) – primary layer
- Beazley (Lloyds Paper, US Underwriter) – primary layer
- NAS (Lloyds) – excess layer

IV. Carrier Chosen

- Beazley (Lloyds Paper, US Underwriter) – primary \$10,000,000 Per Claim / Aggregate Layer
- NAS (Lloyds) – \$10,000,000 xs \$10,000,000 Excess Layer

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.



**Cyber Insurance Proposal - Information Required for RCA
December 7, 2017**

V. List of Highlighted Coverages Offered by the Finalist

Limit of Insurance: \$20,000,000 Per Claim / \$20,000,000 Aggregate
Primary \$10,000,000 Per Claim / Aggregate Layer – Beazley
\$10,000,000 xs \$10,000,000 Per Claim / Aggregate Layer - NAS

Applicable Sublimits:

\$5,000,000 Sublimit for Dependent Business "System Failure" (description below)
\$100,000 Sublimit for Electronic Crime
\$25,000 Sublimit for Criminal Reward
\$100,000 Sublimit for Telecommunications Fraud
\$250,000 Sublimit for Consequential Reputational Loss
\$250,000 Sublimit for Fraudulent Instruction Coverage
10,000 calls per day for Call Center Services
\$2,000 per day/\$100,000 policy aggregate sublimit for loss of salary/court attendance costs by corporate officer of Named Insured – relating to defense of Claim
\$50,000 sublimit for forensics costs specific to Insured's ability to prevent a future electronic data breach as required under a Merchant Services Agreement
\$100,000 sublimit for printing/mailing materials to inform general public about incident

Coverages Payable in Addition to the Limit under the Primary Beazley Policy:

Breach Response Notification Services – 1,000,000 Individuals (10% Sublimit for Individuals outside US, Mexico, and Canada)
Breach Response Legal Services, Computer Expert Services, Public Relations and Crisis Management Services - \$2,500,000

If above limits are exhausted, the Beazley BBR Boost Endorsement will allow the Insured to seek remaining insurance funds from the standard policy limit. Note that for costs incurred outside the limit, a maximum of \$10,000,000 outside the limit is available under the Beazley policy if Beazley services providers are not available.

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.



Cyber Insurance Proposal - Information Required for RCA
December 7, 2017

Retention:

\$250,000 for each Claims except:

\$25,000 for Electronic Crime

\$25,000 for Telecommunications Fraud

Breach Response Notification Expenses: 250 Notified Individuals

Privacy Breach Response Legal Services, Computer Expert Services, Public Relations and Crisis Management Expenses: \$20,000 Combined, but only \$5,000 for legal services.

NOTE: 12 hour waiting Period applies for coverage under the Business Interruption Loss/Dependent Business Loss, Data Recovery costs, and Cyber Extortion Loss

Premium:

\$342,250 Annual Premium + \$17,112.50 applicable surplus lines taxes/fees = **\$359,362.50**

TOTAL

Inclusive of Primary and Excess Layer - \$20M Total Limits

Subject to annual 5% rate increase – subject to exposure changes and market conditions

Key Insuring Agreements Included:

- Information Security & Privacy Liability
 - Defense/indemnity protection for claims brought against Insured arising out of privacy and security breaches
- Privacy Breach Response Services
 - Incident response services including notification, legal, credit monitoring, call center services, public relations, forensics costs
- Regulatory Defense and Penalties
 - Defense/indemnity protection for privacy regulatory proceedings brought against Insured
- Media Content Liability
 - Defense/indemnity protection for claims brought against Insured arising out of the Insured's performance of covered media activities
- PCI Fines, Expenses, and Costs

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.



Cyber Insurance Proposal - Information Required for RCA

December 7, 2017

- Reimbursement for PCI fines, expenses, and costs associated with a payment card breach

Key Insuring Agreements Included:

- Cyber Extortion Payments and Expenses
 - Reimbursement for extortion payments and related expenses arising out of an extortion demand against the Insured
- Data Recovery Costs
 - Reimbursement for costs to restore, recreate, replace electronic data following a security breach
- Business Interruption Loss
 - Reimbursement for loss of income/extra expenses following a system failure of insured's system
- Dependent Business Loss from Dependent Security Breach
 - Reimbursement for loss of income/extra expenses incurred by the Insured following a security breach affecting a dependent business
- Dependent Business Loss from Dependent System Failure
 - Reimbursement for loss of income/extra expenses incurred by the Insured following a system failure affecting a depending business

Noteable Exclusions:

- Conduct / Fraudulent Acts
- Patent/Trademark
- Pollution
- Bodily Injury/Property Damage
- Electrical or mechanical failures of infrastructure not under Insured's operational control
- Fire, flood, earthquake, acts of God
- Employment Practices/Workers Compensation
- FTC, FCC, SEC, RICO – with various carvebacks
- Unsolicited communications
- False advertising

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.



Cyber Insurance Proposal - Information Required for RCA

December 7, 2017

- Antitrust/deceptive trade practices/violation of consumer protection laws– with various carvebacks

Noteable Exclusions:

- Unauthorized trading of money, securities, property
- Goods/products/services
- Gambling
- Insured vs. Insured – with various carvebacks
- Breach of contract – with various carvebacks
- Chargebacks, interchange fees, discount fees, prospective service fees (arising out of PCI claims)
- Prior notice
- Prior knowledge of circumstances
- Costs to remove software program errors or vulnerabilities
- Government seizure of computer system
- Theft of money/securities from Insured- doesn't apply to crime coverage sections offered by endorsement
- War exclusion – includes cyber terrorism carveback
- City of Austin Exclusion – subject to final wording agreement, but endorsement will exclude operations of city of Austin other than Austin Energy.

Open Subjectivity Items:

1. Signed/Dated Beazley Reliance Application
2. Completed Dependent Business Interruption Worksheet
3. Underwriting Call with Beazley (scheduled for December 18th)

This document is for summary purposes only and is not intended to provide a complete and exhaustive description of the coverage. The actual policy language (which includes all endorsements and attachments) and the Insurer's determination of coverage supersede any descriptions or explanations provided herein. For a complete and accurate description of coverage, please refer to the policy (including all endorsements and attachments) or contact John L. Wortham & Son, LP.

EXHIBIT B
CITY OF AUSTIN - PURCHASING OFFICE
SECTION 0400 - SUPPLEMENTAL TERMS AND CONDITIONS

The following Supplemental Terms apply to this contract:

1. **DESIGNATION OF KEY PERSONNEL:** The Contractor's Contract Manager for this engagement shall be George Adkins, Phone: (713) 346-1295, Email Address: george.adkins@worthaminsurance.com . The City's Contract Manager for the engagement shall be Leslie Milvo, Phone: (512) 974-3245, Email Address: leslie.milvo@austintexas.gov . The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.
2. **INTERESTED PARTIES DISCLOSURE.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
3. **INSURANCE:** Insurance is required for this contract.
 - A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
 - B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

EXHIBIT B
CITY OF AUSTIN - PURCHASING OFFICE
SECTION 0400 - SUPPLEMENTAL TERMS AND CONDITIONS

- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
 - ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - iv. **Professional Liability Insurance:** The Contractor shall provide at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **INVOICES:**

EXHIBIT B
CITY OF AUSTIN - PURCHASING OFFICE
SECTION 0400 - SUPPLEMENTAL TERMS AND CONDITIONS

- A. Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Human Resources – Risk Management
Attn:	Accounts Payable
Address	PO Box 1088
City, State Zip Code	Austin, TX 78767

- B. The Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- C. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- D. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

6. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
- i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

EXHIBIT B
CITY OF AUSTIN - PURCHASING OFFICE
SECTION 0400 - SUPPLEMENTAL TERMS AND CONDITIONS

- vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
 - D. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
 - E. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
7. **NON-SOLICITATION:**
- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
 - B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100% of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
 - C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
 - D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100% of the employee's annual compensation while employed by the Contractor.
8. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Leslie Milvo, Risk Manager

(512) 974-3245

leslie.milvo@austintexas.gov

EXHIBIT C
CITY OF AUSTIN - PURCHASING OFFICE
SECTION 0500 - SCOPE OF WORK

1. SCOPE OF SERVICES

The Contractor shall complete the following activities as specified for Austin Energy. The Contractor shall provide services including, but not limited to, the following:

1.1 Negotiate, Bind, and Implement Insurance Program The Contractor shall:

- 1.1.1 Negotiate final terms with selected insurance carrier(s), including, but not limited to collateral requirements, policy renewals, premium payment schedules, and claims reporting and handling protocols. Coverage levels shall meet or exceed those specified in Exhibit A – Cyber Insurance Proposal.
- 1.1.2 Bind coverage, secure binder, and maintain insurance policies and coverage without lapse as requested by the City and provide copies of Master policies and all endorsements to the City. The City shall not pay the premium until 30 days after receipt of an accurate and complete policy and an invoice detailing the premium due, including stamping fees and taxes.
- 1.1.3 Review policies to verify conformance with coverages specified in Exhibit A – Cyber Insurance Proposal and request all required coverage changes and ensure that all endorsements are issued accurately.

1.2 Other Services Provided by Contractor

- 1.2.1 Commit that the named principal and other key personnel responsible for the program will not be removed from the account without prior approval of the City. Replacement of key personnel is subject to approval by the City's Risk Manager.
- 1.2.2 Perform as an agent of the City, including issues related to confidentiality.
- 1.2.3 Handle claims in a timely manner and provide immediate response when catastrophic losses occur. Provide annual loss runs to the City that, at a minimum, specify the date of losses and provide a full description of the loss and the current paid and incurred status of each claim.
- 1.2.4 Store and maintain all paper records and documents associated with the insurance program throughout the duration of the program and for a period of five years after the final policy expiration date.
- 1.2.5 Assist the City with compliance with the Records Retention Act by maintaining records as outlined above and making all program files available to the City as requested for audit and other purposes.

Exhibit D

City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 13th day of APRIL, 2018

CONTRACTOR
Authorized
Signature

Title

JOHN L. WORTHAM & SON L.P. BY WORTHAM,
L.L.P., GENERAL PARTNER BY GEORGE
ADKINS, MANAGING DIRECTOR



MANAGING DIRECTOR



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/05/2018

DEPT: Austin Energy

TO: Purchasing Officer or Designee

FROM: Mark Dombroski

BUYER: John Hilbun

PHONE: (512) 322-6148

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☒ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of- way
 - ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
 - cooperative purchasing administered by a regional planning commission established under Chapter 391
 - ☐ services performed by blind or severely disabled persons
 - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
 - ☐ electricity
 - ☐ advertising, other than legal notices
 - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The City seeks to acquire cyber insurance brokerage and advisory services on behalf of Austin Energy (AE) to obtain insurance coverage to aid in the mitigation of potential cyber exposures and notification of individuals whose personally identifiable information (PII) may be exposed through a cyber related incident. The professional services process consisted of three stages. The first stage was the solicitation of interested brokers licensed by the Texas Department of Insurance through a request for qualifications (RFQS) process. The second stage involved selecting a broker to advise AE regarding the adequacy of its current cyber security practices. The final stage is the obtainment of cyber insurance quotes.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The information obtained from the City's request for qualifications (RFQS) process (TLF0306) offered the analysis and justification necessary to obtain qualified contractors in the market. Of the two offers received, the recommended contractor, John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management, submitted the most qualified offer. Furthermore, the City has experience with Wortham Insurance & Risk Management providing insurance brokerage services in a number of other commercial areas including property and excess liability insurance and have maintained a positive track record of high-quality work.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with John L. Wortham & Son, L.P. D/B/A Wortham Insurance & Risk Management which will cost approximately \$ 2,425,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Caree A. Vance
Originator

3/6/2018
Date

Approved
Certification

[Signature]
Department Director or designee

3/6/18
Date

[Signature]
Assistant City Manager / General Manager
or designee (if applicable)

3/6/18
Date

Purchasing Review
(if applicable)

[Signature]
Buyer

3/6/18 CPH
Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013